

PHILIP BRANDL
GEORGE VOURNAS

IBLA 80-782

Decided May 7, 1981

Appeal from the decision of the Alaska State Office, Bureau of Land Management, declaring No. 2 Below Discovery placer mining claim abandoned and void. AA 28030.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Assessment Work

Where claimants list the wrong name for one of their mining claims on their affidavit of annual assessment work and there is no other means of identifying the claim on the document, BLM properly declares the claim abandoned for failure to comply with 43 CFR 3833.2.

APPEARANCES: Philip Brandl and George Vournas, pro sese.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Philip Brandl and George Vournas have appealed the decision of the Alaska State Office, Bureau of Land Management (BLM), dated

June 30, 1980, declaring the No. 2 Below Discovery placer mining claim abandoned and void for failure to file evidence of annual assessment work for 1979 or a notice of intention to hold the claim by October 22, 1979.

In their statement of reasons, appellants explain that in 1976 they inadvertently listed the claim located on Rambler Creek on their assessment work filing as the No. 2 Above Discovery rather than the No. 2 Below Discovery 1/ and that this typographical error had been carried forward since 1976. In addition, they inform us that assessment work has been done on the claim annually since 1906 and that they have been doing it since 1947.

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of assessment work for the claim with BLM within the 3-year period following that date and prior to December 31 of each year thereafter. Failure to so file is statutorily considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744 (c) (1976), and 43 CFR 3833.4. See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

The purpose of section 314(a) of FLPMA, supra, is not to ensure that assessment work is done on a mining claim but rather to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims are being maintained on Federal lands and which have been abandoned. See Topaz Beryllium Co. v. United States, 479 F. Supp. 309, 311-12 (1979). The statute expressly requires that a mining claimant file the instrument recorded in the local state offices, be it a proof of assessment work, a notice of intention to hold or a detailed report under 30 U.S.C. § 28-1, "including a description of the location of the mining claim sufficient to locate the claimed lands on the ground." See 43 U.S.C. § 1744(a)(2) (1976). We are of the opinion that this requirement could be fulfilled by proper identification of the claim by name or by BLM recordation number. See 43 CFR 3833.2-2(a)(1). Where this information is not supplied, or is erroneous (as in the instant case), a description of the claim sufficient to identify it would also suffice. In the instant case, however, there was simply no way for BLM to ascertain that the assessment work filed for the No. 2 Above Discovery should inure to the No. 2 Below Discovery. Thus, we must hold that, with respect to the No. 2 Below Discovery, there was no timely filing of proof of assessment work. While we recognize that appellants' error was inadvertent, this Board has no authority to excuse lack of compliance. Glen J. McCrorey, 46 IBLA 355 (1980).

1/ Appellants' affidavit of annual labor lists numerous claims including the No. 2 Above Discovery mining claim on Rambler Creek. Also on the list there is a No. 2 Below Discovery mining claim on Nugget Creek. However, the location notice for the claim at issue indicates that it is located on Rambler Creek.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

